

D.P.U. 96-45-B

Petition of the Massachusetts Municipal Wholesale Electric Company for Authority Under G.L. c. 164, § 72A to Enter Upon Lands to Survey

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FOR: MASSACHUSETTS MUNICIPAL WHOLESALE  
ELECTRIC COMPANY  
Petitioner

## I. INTRODUCTION

On April 24, 1996, Massachusetts Municipal Wholesale Electric Company ("MMWEC" or "Company") filed a petition with the Department of Public Utilities ("Department") seeking authority under G.L. c. 164, § 72A to enter upon land in the towns of Ludlow, Wilbraham, Hampden, Monson and Palmer for the purpose of making a survey of proposed natural gas pipeline routes, preliminary to eminent domain proceedings.

MMWEC is proposing to construct a 15-mile, 16-inch natural gas pipeline from its Stony Brook Energy Center power plant in Ludlow to a point of connection with the Tennessee Gas Pipeline Company interstate pipeline in southern Massachusetts (Petition at 2). MMWEC states that the purpose of the pipeline "is to provide quantities of natural gas sufficient to enable the [Stony Brook power plant] to operate more frequently (if not entirely) on natural gas, resulting in both economic benefits associated with lower fuel costs and a reduction in emissions from the plant" (id.).

MMWEC has identified a primary and an alternative corridor (or route) for the proposed pipeline (Petition, Exh. A). The primary corridor runs through the towns of Ludlow, Wilbraham and Hampden; the alternative corridor runs through the towns of Palmer, Ludlow, Wilbraham and Monson (id.). The Company states that "[t]o determine the placement of the final [forty-foot

wide pipeline] right-of-way within the 3000 feet wide corridors [sic], and to determine the lands which may be subject to MMWEC's power of eminent domain,<sup>1</sup> it is necessary to enter temporarily upon the private lands comprising the corridors to conduct surveys and other field studies" (Petition at 4).

On July 18, 1996, the Department issued an order authorizing MMWEC to enter upon and survey the property of 13 landowners in Ludlow, Wilbraham and Hampden, who had refused the Company permission.<sup>2</sup> Massachusetts Municipal Wholesale Electric Company, D.P.U. 96-45, at 5-6 (1996). The Department ordered that the "docket shall remain open for a reasonable period of time to allow the Company to supplement its petition should it determine [for certain specified reasons] the need to obtain Department approval to survey the lands of other property owners along the primary corridor." Id. at 7.

On July 11, 1996, MMWEC supplemented its petition with a request to survey the property of 13 additional landowners along the primary corridor in the towns of Ludlow,

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<sup>1</sup> MMWEC contends that c. 775, § 7 of the Acts of 1975 give the Company eminent domain powers and that, therefore, it is not necessary for MMWEC to petition the Department for authority to take land by eminent domain for construction of the pipeline (MMWEC's June 17, 1996 Letter to Hearing Officer at 2).

<sup>2</sup> The Department's approval was subject to "the following conditions: (1) no trees or timber shall be cut down or removed on the affected properties; (2) small brush may be cut down and removed on the affected properties, but only in areas where surveyors need to make a line of sight; (3) areas excavated for purposes of conducting archaeological surveys on the affected properties must be restored to a condition reasonably consistent with their condition before construction; (4) no blasting shall be conducted on any of the affected properties; and (5) the Massachusetts Municipal Wholesale Electric Company shall provide a copy of its petition and plans to any of the landowners listed in Appendix A that request a copy ...." Massachusetts Municipal Wholesale Electric Company, D.P.U. 96-45, at 6 (1996).

Hampden and Wilbraham. On August 2, 1996, the Department issued an order authorizing MMWEC to enter upon and survey the property of those 13 additional landowners.<sup>3</sup> Massachusetts Municipal Wholesale Electric Company, D.P.U. 96-45-A, at 6-8 (1996). The Department again ordered that the “docket shall remain open for a reasonable period of time to allow [the Company] to supplement its petition should it determine the need to obtain Department approval to survey the lands of other property owners along the primary corridor.” Id. at 8.

On July 22, 1996, MMWEC again supplemented its petition with a request to survey the property of 14 additional landowners along the primary corridor in the towns of Ludlow, Hampden and Wilbraham. This Order addresses that most recent request.

General Laws c. 164, § 72A authorizes the Department to grant an electric company authority to enter private lands for the purpose of making a survey preliminary to eminent domain proceedings.<sup>4</sup> The Department may grant such permission without notice and hearing. Carlisle

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<sup>3</sup> The Department’s approval was subject to "the following conditions: (1) no trees or timber shall be cut down or removed on the affected properties; (2) small brush may be cut down and removed on the affected properties, but only in areas where surveyors need to make a line of sight; (3) areas excavated for purposes of conducting archaeological surveys on the affected properties must be restored to a condition reasonably consistent with their condition before construction; (4) no blasting shall be conducted on any of the affected properties; (5) no man-made structures, including buildings, fences and stone walls shall be disturbed; (6) the Massachusetts Municipal Wholesale Electric Company shall make a reasonable effort to arrange with the landowners a convenient date and time that their property will be surveyed so that the landowners may observe the surveying; and (7) the Massachusetts Municipal Wholesale Electric Company shall provide a copy of its petition and plans to any of the landowners listed in Appendix A that request a copy ....” Massachusetts Municipal Wholesale Electric Company, D.P.U. 96-45-A, at 6-7 (1996).

<sup>4</sup> MMWEC is an electric company to which the statute applies. See St. 1975, c. 775, (continued...)

v. Department of Public Utilities, 353 Mass. 722 (1968). In acting on this petition, the Department exercised its discretion on the question of notice and hearing by mailing notice of this proceeding to all landowners upon whose land the Company has petitioned for authority to enter (see Appendix A). This notice, dated July 23, 1996, provided that property owners could submit comments on the petition to the Department by August 1, 1996. The Department received comments from the following landowners: Richard and Nancy Lewenczuk, William and Betty Jaciow, Barbara and Donald Libiszewski, Mark Simon and Debra Goddeau, Century Bank, Elinor Paul, John Jensen, Rudolph Cira, and John Cira.

The comments reflected landowners' opposition to the proposed route, including the need for the pipeline, and concerns about perceived negative impacts of the proposed pipeline project. The Jaciows, and Mr. Simon and Ms. Goddeau also had comments specific to the survey petition.

The Jaciows stated that the cutting of large shrubs bordering their property could reduce "protection from the winter north winds" (Jaciows Letter). They also raised concerns about the effect of the surveying process on their land and leach field (id.). In addition, they noted that they have a large dog and could not guarantee the safety of the surveyors (id.).

Mr. Simon and Ms. Goddeau raised concerns that the surveying of their property could cause damage to a wetlands area and brook, and destroy wildlife habitat (Simon and Goddeau Letter). They also opposed "the cutting, pruning or lopping of trees, bushes, and shrubs" (id.).

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<sup>4</sup>(...continued)  
§ 19.

Finally, they noted the hazards that may be presented by the property's "steep grades, loose rock and talus" and a stone wall (id.).

## II. ANALYSIS AND FINDINGS

Before the Department makes a determination on the Company's petition filed under G.L. c. 164, § 72A, the Department considers the comments submitted by the affected landowners. The Department finds that although the commenters note legitimate concerns, they have not raised sufficient reasons to deny the Company authority to survey their land, pursuant to § 72A, and that their concerns can be adequately addressed by the conditions placed on MMWEC in the Department's first and second Orders in this case. Moreover, the Department reminds MMWEC and property owners that under § 72A, MMWEC remains liable to property owners for any damage caused to their property as a result of the surveying.

Accordingly, the Department finds the Company's petition to be appropriate as a necessary preliminary activity incident to the proposed pipeline project. The Company is granted authority to enter those lands listed in Appendix A, subject to the conditions enumerated in Section III of this Order.<sup>5</sup>

The Department's approval under § 72A does not constitute a judgment regarding the project itself or the need for or location of eminent domain takings. Consideration of, and findings regarding, the underlying project are reserved for the Company's later petitions to the

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<sup>5</sup> We note, in response to the comments of the Jaciows, that the legislative mandate of § 72A allows MMWEC's surveyors to enter and survey land, when the Department has determined that such entry is appropriate to effect this authority. MMWEC and the Jaciows should arrange for a mutually-convenient surveying time, and the Jaciows should ensure that their dog is restrained during that time.

Department and the Energy Facilities Siting Board. The Department will keep this docket open for a reasonable period of time to allow MMWEC to supplement its petition should MMWEC identify additional land for which it is unable to obtain permission to survey.

### III. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That, for the purpose of making surveys and field studies in connection with the proposed Stony Brook/Tennessee Pipeline Project, as described in the Company's petition and attachments, Massachusetts Municipal Wholesale Electric Company, acting through its employees, agents, and representatives, is authorized to enter upon the lands of those persons listed in the attached Appendix A; and it is

FURTHER ORDERED: That the Massachusetts Municipal Wholesale Electric Company comply with the following conditions: (1) no trees or timber shall be cut down or removed on the affected properties; (2) small brush may be cut down and removed on the affected properties, but only in areas where surveyors need to make a line of sight; (3) areas excavated for purposes of conducting archaeological surveys on the affected properties must be restored to a condition reasonably consistent with their condition before construction; (4) no blasting shall be conducted on any of the affected properties; (5) no man-made structures, including buildings, fences and stone walls shall be disturbed; (6) the Massachusetts Municipal Wholesale Electric Company shall make a reasonable effort to arrange with the landowners a convenient date and time that their property will be surveyed so that the landowners may observe the surveying; and (7) the Massachusetts Municipal Wholesale Electric Company shall provide a copy of its petition and

plans to any of the landowners listed in Appendix A that request a copy; and it is

FURTHER ORDERED: That the Massachusetts Municipal Wholesale Electric Company shall transmit a copy of this Order, by certified mail, to the landowners listed in the attached Appendix A at least five days prior to any entry upon the affected properties; and shall certify to the Department no later than 14 calendar days following transmittal of this Order to all the landowners that such transmission has been accomplished; and it is

FURTHER ORDERED: That within three days of the date of this Order, the Massachusetts Municipal Wholesale Electric Company shall serve a copy of this Order on the selectmen of the towns of Ludlow, Wilbraham, Hampden, Palmer and Monson, and place a copy of this Order in the libraries of those towns for public inspection; and it is



FURTHER ORDERED: That this docket shall remain open for a reasonable period of time to allow the Massachusetts Municipal Wholesale Electric Company to supplement its petition should it determine the need to obtain Department approval to survey the lands of other property owners along the primary corridor.

By Order of the Department,

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John B. Howe, Chairman

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Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner

APPENDIX A

LANDOWNERS TO WHOM NOTICE WAS SENT

Michele LaRose and Louis Latourneau  
798 Center Street  
Ludlow, MA 01056

Stephen and Wanda Joshi-Ryzewicz  
494 Glendale Road  
Wilbraham, MA 01095

William and Betty Jaciow  
765 Center Street  
Ludlow, MA 01056

Richard and Nancy Lewenczuk  
76 Crane Hill Road  
Wilbraham, MA 01095

Century Bank & Trust Co.  
400 Mystic Avenue  
Medford, MA 02155 (for 9 and 10 Webster Lane, Wilbraham)

Elinor Paul  
685 Center Street  
Ludlow, MA 01056

Donald and Barbara Libiszewski  
2713 Boston Road  
Wilbraham, MA 01095  
(for 2713, 3123, and 3125 Boston Road)

Mark Simon and Debra Goddeau  
515 Glendale Road  
Wilbraham, MA 01095

John Cira  
776 Chapin Street  
Ludlow, MA 01056

Rudolph Cira, Jr.  
776 Chapin Street  
Ludlow, MA 01056

John and Robin Jensen  
501 Glendale Road  
Wilbraham, MA 01095

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).